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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/698,118	10/27/2000	Duane Girard Uitenbroek	KCC-14,607	6282

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EXAMINER

WACHTEL, ALEXIS A

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 05/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/698,118

Applicant(s)

UITENBROEK ET AL.

Examiner

Alexis Wachtel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 April 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22, 26-37 and 39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22, 26-37 and 39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Detailed Action

Response to Amendment

1. Applicant's Remarks filed April 10, 2003 have been entered and carefully considered.

Applicant's remarks are sufficient to overcome the obviousness rejections of claims 22,26-37 and 39 since Applicant has shown that the prior art as previously applied fails to provide teachings that render obvious the identified deficiencies. The prior art as currently applied provides a new basis of rejection as shown below.

Applicant's arguments are rendered moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 22, 26-37 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mormon 028' in view of US 6,129,801 to Benson et al.

The method limitation of claim 28, wherein the film and web are bonded together via a co-extrusion coating process is given patentable weight in so far as the effects the claimed steps have on the structure and/or chemistry of the final product. It is believed the claimed process will be identical to a web thermally or ultrasonically bonded to the film as taught in the cited art discussed below.

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(Morman '028) is directed to breathable elastic laminates and teaches a stretchable spunbonded nonwoven web bonded to an elastic film, either thermally, ultrasonically, or with an adhesive when the web is in an elongated "necked" in condition. The nonwoven web may be stretched in the cross machine direction by tenter frames (Col 8, lines 27-31). Examiner notes that (Morman '028) defines elastic as "any material which upon application of a biasing force is stretchable, that is, elongatable, to a stretched, biased length which is at least about 160 percent of it relaxed unbiased length, and which will recover at least 55 percent of it elongation upon release of the stretching, elongating force (Col 2, lines 58-67). Said film can be made from any suitable film-forming elastic polymer that exhibits an ability to absorb and diffuse water vapor such as polyurethanes, polyester ethers and polyether amides (Col 2, lines 1-5). Said breathable elastic film or sheet includes a water vapor soluble polymer (Col 6, lines 4-6). The breathable elastic film or sheet should have a moisture vapor transmission (MVTR) rate of at least 2000 grams/m²-24 hours (Col 6, lines 13-18). With regards to claim 36, the breathable elastic laminate is useful as an outer cover for disposable diapers and other personal care products. The laminate is also useful for breathable surgical gowns and other breathable applications (Col 1, lines 5-10).

With regards to claim 22, (Morman '028) as set forth above fails to teach that the spunbonded nonwoven web may be creped to achieve machine direction stretch. Benson et al teaches that a web can undergo a process to improve its extensibility. Such a web can be a spunbonded nonwoven (Col 5, line 3). Said spunbonded nonwoven is an example of a neckable material that undergoes a necking process (Col

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5, lines 25-33) as the first of several steps required to afford improved extensibility to said spunbonded nonwoven. The spunbonded nonwoven then undergoes a mechanical stabilization process whereby said spunbonded nonwoven is incrementally stretched in a direction perpendicular to the necked direction thereby stabilizing said spunbonded nonwoven (Col 6, lines 28-42, 48-52). After the mechanical stabilization process, said spunbonded nonwoven undergoes a micrexing process (Col 7, lines 21-25), which is well known in the art as "microcreping." The extensibility of said spunbonded nonwoven in a first direction is provided by the final "micrexing" process (Col 7, lines 63-64).

Examiner notes that the "first direction" refers to the MD machine direction (Col 5, lines 27-30). In view of this teaching it would have been obvious for one of ordinary skill to have imparted MD extensibility to Morman '028's spunbonded nonwoven web by microcreping. One of ordinary skill would have been motivated by the desire to improve the tactile properties of the resulting laminate. Examiner notes that imparting machine direction stretch to Mormon '028's spunbond nonwoven that already has cross machine direction stretch results with a biaxial stretch nonwoven.

It would also have been obvious for one of ordinary skill in the art to have microcreped Morman '028's spunbonded nonwoven prior to bonding it to the film motivated by the desire to prevent the microcreping process from damaging the film as would result if the web and film were already bonded together.

With regards to claims 29-35, although the claimed stretch ratios are not explicitly taught by Morman '028, or Benson et al, it is reasonable to presume that said limitations would be met by the combination of the three references. Support for said presumption

is found in the use of similar materials (i.e. MD/CD stretchable laminate made from a MD/CD stretchable nonwoven spunbonded web and elastic water vapor permeable polymeric film) and in the similar production steps (i.e. bonding web to film) used to produce the breathable elastic laminate. The burden is upon the Applicant to prove otherwise.

4. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over (Morman '028) in view of US 6,129,801 to Benson et al and US 5,554,143 to Roe et al.

The references as set forth above fails to teach pre-stretching the film used in the breathable elastic laminate prior to bonding it to the spunbonded nonwoven web.

Roe et al is directed to absorbent articles such as diapers, incontinent briefs having an extensible waist feature (Col 1, lines 10-15). Extensible back waist features preferably comprise a structural elastic-like film (SELF) web (Col 2, lines 54-59). It may be desirable for the (SELF) web to exhibit a certain degree of bulkiness. One method of providing this bulk includes forming a polymeric film, prestretching it and subsequently applying a nonwoven to one or both sides of said film while said film is in a prestretched state. Upon relaxation of the film's stretch, the nonwoven material forms puckers which give the material added bulk (Col 24, lines 38-48). In view of this teaching it would have been obvious for one of ordinary skill in the art at the time the invention was made to have prestretched the film as set forth above before applying to the spunbonded nonwoven web, motivated by the desire to impart bulk to the resulting laminate and thusly increase the cushioning capabilities of said laminate.

Prior Art of Record


5. The prior art of record and not relied upon is considered pertinent to Applicant's disclosure. In addition, the following references are cited for disclosing various aspects of Applicant's invention: US 5,114,781

Conclusion

6. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Alex Wachtel, whose number is (703)-306-0320. The Examiner can normally be reached Mondays-Fridays from 10:30am to 6:30pm.

If attempts to reach the Examiner by telephone are unsuccessful and the matter is urgent, the Examiner's supervisor, Mr. Glenn Caldarola can be reached at (703) 308-6824. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


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